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In the Supreme Court of the United States

OCTOBER TERM, 1940.

No. .....

KENNETH S. CLAPP,
Plaintiff-Petitioner,

vs.

STEWART-WARNER CORPORATION,
Defendant-Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Kenneth S. Clapp, prays for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, to review:

(1) the decision of December 5, 1940 of that Court (R-II 1039, and reported at 116 Fed. 2nd 68, a copy being included as an appendix to the attached Brief in support of this Petition)

(2) the judgment of the Court entered December 5, 1940 (R-II 1046), holding the plaintiff-petitioner's Baldner patent No. 1,570,032 not infringed by the manufacture, use and sale of defendant-respondent's grease-dispensing apparatus.

The decision of the said Seventh Circuit Court of Appeals in the case at bar is in conflict with the decisions of this Court upon two fundamental and well established principles of patent law. The two conflicting grounds are:

First Conflicting Ground: The decision of the Seventh Circuit Court of Appeals is in direct conflict with the decisions of this Court in the case of *Rogers vs. Alemite* (298

U. S. 415) and in the case of *Lincoln vs. Stewart-Warner* (303 U. S. 545), involving the defendant-respondent's patents upon grease-hose couplers usable with the grease-dispensing apparatus here in suit, and presenting parallel facts concerning the same general type of greasing equipment and its use and the same legal situation as in the case at bar, and deciding the same question of patent law as is involved in the present case at bar.

Second Conflicting Ground: The decision of the Seventh Circuit Court of Appeals is in direct conflict with the decisions of this Court in the case of *Continental Paper Bag Co. vs. Eastern Paper Bag Co.* (210 U. S. 405), the case of *Leeds and Catlin vs. Victor Talking Machine Co.* (213 U. S. 301), the case of *Altoona Theaters vs. Tri-Ergon Corp.* (294 U. S. 477) and other cases, deciding the same question of patent law as is involved in the present case at bar.

A transcript of record of the case at bar, including the proceedings in the said Seventh Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the Rules of this Court.

SUMMARY AND SHORT STATEMENT OF MATTER INVOLVED.

First Conflicting Ground:

The present defendant-respondent, Stewart-Warner Corporation, was also before this Court in the case of *Lincoln vs. Stewart-Warner* (303 U. S., 545) and also in the case of *Rogers vs. Alemite Corp.* (298 U. S. 415), under the names of its wholly owned subsidiary and its predecessor, Alemite Corporation and Bassick Mfg. Co.

In the said case of *Lincoln vs. Stewart-Warner* the decision reviewed and reversed by this Court was that of the Circuit Court of Appeals for the Seventh Circuit and in the case at bar the decision of which review and reversal is sought is also that of the said Circuit Court of Appeals

for the Seventh Circuit, upon grounds which are the *same* as those upon which the said Court of Appeals was reversed by this Court in *Lincoln vs. Stewart-Warner* (303 U. S. 545). Both the present case and the *Lincoln vs. Stewart-Warner* case involved lubricating equipment. In the present case, the invention relates to a large grease-compressor or pump for pumping grease through a conduit or hose. In the *Lincoln vs. Stewart-Warner* case the subject matter of the invention related to the small coupler, attached to the end of the hose, for quick connection to the fitting of the automobile or machinery bearing.

The Seventh Circuit Court of Appeals in the *Lincoln vs. Stewart-Warner* case held that claims drawn to include a long list of aggregative parts of an old grease-compressor, old hose, improved coupler, and old fitting on an automobile, were proper and permitted a monopoly upon that old aggregation. This Court thereupon completely reversed the Seventh Circuit Court of Appeals in its decision of *Lincoln vs. Stewart-Warner* and stated that such claims to the old aggregation were invalid as attempting to unlawfully monopolize more than that which was invented, and stated that claims must be confined to that part of the equipment in which the invention resided;—in that case, the coupler.

Completely unmindful of its reversal in the *Lincoln vs. Stewart-Warner* case, the Seventh Circuit Court of Appeals has, in the case at bar, *required* that claims *must* be drawn to include a long list of old aggregative parts consisting of a hose, coupler and fitting with an improved grease-compressor, in order to protect the invention residing *solely* in the improved grease-compressor. To exonerate the accused grease-compressors from the charge of infringement the Court of Appeals pointed out that the accused grease-compressors are *always sold and used with a hose and coupling* adapted to be attached to a fitting, but that inasmuch as the patent claims did not include a

catalogue of a listing of these additional old parts of hose, coupler or other extraneous part, there was no infringement. In other words, the claims in suit being directed to the grease-compressor *per se* and being admittedly valid,* were held not infringed for the reason that the claims are confined to the grease-compressor, (the lawful scope of the invention) rather than to the aggregative parts of the grease-compressor, the hose, the coupler, and the fitting (the unlawful monopoly), as this Court held the claims should be so confined by its reversal and mandate to the Seventh Circuit Court of Appeals in the *Lincoln vs. Stewart-Warner* case. The plaintiff-petitioner has been penalized because the patent is in accordance with the law enunciated by this Court rather than in conformity with the overruled decision of the Seventh Circuit Court of Appeals.

The said Seventh Circuit Court of Appeals, in the decision of which review is here sought, has thus persisted in the same error and the same mistaken view of a fundamental and well established principle of patent law for which it was reversed by this Court in said case of Lincoln vs. Stewart-Warner.

The plaintiff-petitioner is the owner of the Baldner patent in suit (R-II 661, 1040), and is general manager of the U. S. Air Compressor Company, of Cleveland, Ohio, manufacturers of automobile service station equipment such as air compressors, car lifts, car washers, and grease-dispensing machines or so-called "grease guns," for the manufacture of which it is licensed under defendant-respondent's so-called "Alemite" coupler patents (R-I 26, 463).

The Baldner patent (R-II 680) discloses a novel combination of elements comprising a new kind of power driven grease-dispensing machine, grease-compressor, pump or so-called grease-gun which is the subject-matter of Baldner

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* Found valid by the Court of Appeals (R-II 1046).

claims 2, 3, 4 and 13 in issue. In the Courts below the defendant-respondent's power driven grease-dispensing machine was referred to by its trade name of "Rock Crushers."

As this Court said in *Rogers vs. Alemite* (298 U. S. 415) grease-dispensing machines, compressors, pumps or grease-guns are generally "old in the art," and as this Court said in *Lincoln vs. Stewart-Warner* (303 U. S. 545) the function of grease-dispensing machines, compressors, pumps or grease-guns "has always been to force a fluid or grease through a conduit." There were different types, kinds and constructions of grease-dispensing machines made and patented prior to the Baldner patent in suit. Nevertheless, Baldner was the *first* one to invent a two-stage grease-dispensing machine or grease-gun in which an impositive-displacement screw-conveyor continuously feeds grease from a reservoir to a positive-displacement intermittent booster or pump positively inter-geared therewith, at a rate-of-feed *greater* than the displacement rate of the booster;—to the end that, upon the intake stroke or movement of the piston, the chamber of the booster is *completely filled* at each and every stroke (instead of becoming "air-bound") and that, upon the discharge stroke or movement of the piston, the discharged grease is ejected from the booster or pump in a *uniform and continuous* flow (instead of spasmatic spluttering with air pockets or instead of ceasing to flow altogether).

A positive-displacement type of pump, ejector or booster, is one having a cylinder or chamber of fixed dimensions in which operates a close fitting piston or ejecting member having a recurring cycle or alternating intake and ejecting movements. The piston or ejecting member may be of two types, (1) the rotary-piston or vane type or (2) the reciprocatory type of piston. It is admitted in the Record (R-I 229) that both types are equivalent. In a positive-displacement pump or ejector, the cylinder or

chamber is not in constant communication with the source of grease supply but is in communication with the source of grease supply only at regularly recurring intervals during what is commonly called the "intake" movement or stroke, during which a small amount of grease is transferred to the cylinder or chamber, whereupon the communication with the source of grease supply is shut off and all of the grease which has therefore been entrapped in the pump chamber or cylinder is thus entirely separated or divorced from the source of the grease supply and is ejected by the piston or ejector upon the exhaust or discharge stroke or movement. Upon each successive discharge stroke or movement of the piston, the grease is divided into charges of a fixed or known quantity determined by the size of the pump chamber or cylinder. A positive-displacement pump or ejector, in positively advancing or ejecting grease, is distinguishable from an impositive pump or ejector, such for example, as a screw-conveyor which permits the grease to leak back when the forward end of the screw conveyor is closed or dammed.

The prior art of record shows a few single-stage and two-stage grease-dispensing machines but none of these embody the Baldner invention in which the grease is *initially* engaged by a power-driven screw conveyor (impositive feed) which advances or feeds the grease to a *positive*-displacement type pump, ejector or so-called "booster" which finally ejects or discharges the grease through a conduit or hose. In the Baldner device, the screw conveyor is inter-geared and power driven in unison with the booster pump and feeds the grease to the booster pump at a rate in *excess* of the pumping rate of the booster and packs or presses the grease, free of air pockets or spaces, at the entrance to the booster to assure, upon each suction stroke, the quick and *complete* filling of the pumping chamber of the booster with solid grease devoid of air pockets. Accordingly, upon each pumping or ejecting

stroke the grease is discharged in a solid stream. The foregoing may be summarized by quoting from lines 43 to 47 of the Baldner patent (R-II 683) which reads:

> "A further object of the invention is to provide in conjunction with the dispensing apparatus, a 'booster' or auxiliary ejector or pump to insure *uniform and continuous discharge.*"

Claims 2, 3, 4 and 13 of the Baldner patent in suit are admittedly valid* and therefore define a patentable invention which is new and useful in the art. No prior art was set up by the Court of Appeals to restrict them in any way. The said claims 2, 3, 4 and 13 are confined to the described Baldner two-stage grease-dispensing machine *per se* and comply fully with the principle set forth by this Court in the *Lincoln vs. Stewart-Warner* case, and do not include extraneous elements or the environment with which the grease-dispensing machine may be used.

The Baldner patent shows a conduit or hose leading from the discharge outlet of the positive-displacement booster pump (conduit 23 of figure 1 and referred to in lines 53-54 and 112 of page 2 of the Baldner patent, R-II 684) but does not go into a detailed description or elaborate exposition of what occurs *after* the grease is discharged or ejected by the two-stage grease-dispensing machine *per se.* The Baldner specification sets forth that the piston or rotary vane in the booster chamber **forcibly** ejects or advances the grease (R-II 684). The specification does not go on to explain the elemental and well known physical fact that the pressure of the discharged grease after ejectment is dependent upon the *external factor of resistance* outside of the machine itself. That is, if the grease is discharged freely into the open and meets no resistance there is little or no pressure built up in the grease. This may

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* The Circuit Court of Appeals found the patent and claims in suit valid and refused to apply any prior art to anticipate or restrict the claims in any degree. (R-II 1046.)

be characterized as the "free flow" condition. On the contrary, if an external resistance is set up to the flow of the discharged grease, such as the resistance made by a restricted hose of small bore, or by a closed nozzle or valve, or by a "frozen" or dirty automobile bearing with which the hose may be connected, then a pressure will be built up in the grease hose.

This elemental fact that pressure of the grease is dependent upon the external factor of resistance is uncontroverted and was so found by the Court of Appeals in describing the accused "Rock Crusher" two-stage grease dispensing-machine, as for example, in the following language:

> "Continued operation of the motor will pump grease through the hose into the fitting through which the automobile bearing is lubricated. *If** the moving lubricant meets with *resistance* because of dirt, rust or dried grease in the fitting or bearing, the motor will compress the grease until the resistance is overcome, the machines being capable of building up grease *pressure* of more than five thousand pounds per square inch." (R.-II 1044.)

The Baldner grease-dispensing machine also was capable of building up grease pressure of more than five thousand pounds per square inch. On actual demonstration in court the Baldner machine produced a higher pressure than the defendant-respondent's machine, reaching **7000** pounds pressure per square inch. (R-I 224.)

Following the well established principle of proper claim drafting so clearly enunciated by this Court in *Lincoln vs. Stewart-Warner* (303 U. S. 545) the Baldner patent did not include in the claims in suit the well known hose, coupler, fitting, automobile bearing or any other extraneous element outside of the invented machine, and of course did not include the resultant pressure which may be produced

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* All emphasis throughout is our own unless otherwise indicated.

in the discharged grease meeting the resistance of the hose, coupler, fitting, automobile bearing or other extraneous element. For Baldner to have included in claims 2, 3, 4 and 13, the hose, the coupler or the fitting would have been to incorporate into the claim more than he invented and would have been in direct contradiction to this Court's admonition in *Lincoln vs. Stewart-Warner* against claiming an aggregation of well known elements.

In spite of the decision in the *Lincoln vs. Stewart-Warner* case, the Seventh Circuit Court of Appeals reverted back to its old erroneous position and exonerated the Defendant-Respondent's accused machine on the grounds that:

> "They (the accused 'Rock Crushers') are always *sold and used* with a delivery hose attached, the hose being fitted at its forward end with a coupler by which it is attachable to the lubricant fitting" (R-II 1044)

and are

> "adapted to deliver grease through a hose conduit to automobile lubricant fittings, where grease is delivered to bearings under pressure of five thousand pounds and higher, per square inch." (R-II 1043.)

This ruling that the "Rock Crushers" escape from the scope of the claims in suit because the claims do not include the hose, coupler and fitting and the pressure of the grease encountering the resistance offered by the hose, coupler and fitting, is in direct contravention and opposition to this Court's decisions in *Rogers vs. Alemite* (298 U. S. 415) and *Lincoln vs. Stewart-Warner* (303 U. S. 545).

The Seventh Circuit Court of Appeals has therefore penalized the plaintiff-petitioner because the Baldner claims in suit are fully in accord with what this Court said patent claims should be; or stated in the reverse, because the Baldner claims avoid that which this Court said they should avoid, in its decisions in the case of Rogers vs. Alemite (298 U. S. 415) and the case of Lincoln vs. Stewart-Warner (303 U. S. 545).

Second Conflicting Ground:

Baldner's patent specification besides showing, describing and claiming his power driven two-stage grease-dispensing machine *also* shows and describes a small meter, dial or gauge and an electrical switch-controlling circuit which may be optionally superimposed upon the grease-dispensing machine, in order to indicate or register the total amount of grease dispensed or delivered by the grease-dispensing machine.

In other words, the Baldner specification not only showed and described his novel two-stage grease-dispensing machine or "grease-gun" but also showed and described a tachometer to *count* the number of cycles or strokes of his booster pump.

The counting-dial and electrical controlling circuit in the Baldner specification are *not* included in claims 2, 3, 4 and 13 in suit but are the subject matter of *other* claims not in suit. There has been no charge that the defendant-respondent has used the small meter, dial or gauge, or the electrical control circuit which are disclosed in the patent specification. The charge of infringement is directed to the large grease-dispensing machine, *per se.* The Baldner grease-dispensing machine and the defendant-respondent's machines are structurally equivalent. The parts of one machine are readily interchangeable with corresponding parts of the other machine. The Court of Appeals in its opinion (R-II 1039) described the structures of both the patented machine and the accused machine and found *no distinction* in the structural elements of the machines *per se.* The patent claims in suit cover or "read on" the accused "Rock Crushers," as all the elements in the claims are found in the accused devices. In addition, the Seventh Circuit Court of Appeals failed to find any pertinent prior art which would anticipate or restrict the scope of the Baldner claims in suit. Therefore, the present status of the claims in issue is that they are valid and are unrestricted by any prior art.

Notwithstanding the fact that (1) the Baldner claims in suit are valid and unrestricted by the prior art, (2) the Baldner machine and the accused machine are mechanical equivalents, and (3) the claims in suit "read on" the accused machine, element for element, the Seventh Circuit Court of Appeals exonerated the accused "Rock Crushers" upon the erroneous ground that the "entire specification" is the measure for the patented invention rather than the claims and that the patent does not protect from infringement anything other than the "entire combination" disclosed in the "entire specification." The Court of Appeals disregarded the claims in suit and took the "entire specification" as the measure of the patent, contrary to the principle repeatedly enunciated by this Court in the case of *Continental Paper Bag Co. vs. Eastern Paper Bag Co.* (210 U. S. 405), the case of *Leeds and Catlin vs. Victor Talking Machine Co.* (213 U. S. 301), the case of *Altoona Theaters vs. Tri-Ergon Corp.* (294 U. S. 477) and other cases. The Circuit Court of Appeals excused the "Rock Crushers" from infringement in the following language:

> "These 'Alemite Rock Crushers' are never sold as *metering* or measuring devices, and could not be so used. * * * There is *no meter or gauge* of any kind *included* in the structure which is used or usable to measure the quantity of grease discharged, and in lubricating a car there is *no way of knowing* how many cubic inches of lubricant may be used." (R-II 1044.)
>
> "Assuming without conceding that the accused structures, *so far as they go,* use precisely the *same means* as the patent uses, yet appellee could not be held for infringement, for Baldner has *no patent* on anything *less* than his *entire combination.*" (R-II 1046.)

This ruling that the accused "Rock Crushers" avoid the charge of infringement because they do not include a meter, gauge or other counting or indicating mechanism, was made in face of the fact that the claims in suit do not

include nor attempt to include, nor has it been asserted or found that they do include, any such meter, gauge or other counting or indicating mechanism, as for example claim 3 of the patent:

> "3. In an apparatus of the character described, a reservoir, an ejector communicating therewith dividing the discharged material into successive charges of known capacity and conveyor means for supplying the material to the ejector in quantity greater than its capacity whereby said ejector will act to impede the normal flow of the material under influence of the first ejector and will be operated at full capacity to discharge the material in known measured quantity."

The Seventh Circuit Court of Appeals has therefore erroneously deprived the plaintiff-petitioner of protection as against infringement of the Baldner two-stage grease-dispensing machine described and covered by claims 2, 3, 4 and 13 in suit, even though Baldner fully complied with the patent statute that "he shall particularly point out and distinctly *claim* the part, improvement, or combination which he claims as his invention or discovery"* and despite the expressed law laid down by this Court that it is the *claims* of a patent which measure the invention and the scope of the patent monopoly.

The Circuit Court of Appeals by thus erroneously insisting that the "entire specification" measures the patented invention rather than the claims, has made a ruling directly contrary to the patent statutes and completely opposed to the applicable decisions of this Court in the cases of Continental Paper Bag Co. vs. Eastern Paper Bag Co. (210 U. S. 405); Leeds and Catlin vs. Victor Talking Machine Co. (213 U. S. 301); Altoona Theaters vs. Tri-Ergon Corp. (294 U. S. 477) and many other decisions of this Court.

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* Quoted from Section 4888 of the Revised Statutes (U. S. C. Title 35, Sec. 33).

A summary of this case is graphically shown in the drawing inserted immediately following this Statement. The large central body of the drawing illustrates the Baldner two-stage grease-dispensing machine and the equivalent "Rock Crusher" two-stage grease-dispensing machine.

The color scheme applied to this drawing is the same as that adopted in the exhibits in the Courts below. The color *green* has been applied to grease in the main reservoir (and in the communicating passageways) solely under the influence of the screw conveyor initially advancing the grease. The color *purple* has been applied to the walls of the pump or "booster" chamber which is of fixed volumetric capacity. The color *red* has been applied to the ejecting-piston of the pump or "booster." The color *blue* has been applied to the grease which has been separated or "divorced" from the main (*green*) body of grease by the ejecting piston (*red*) and which is forced out through the hose or conduit solely under the influence of the ejecting piston (*red*).

Extending from the sides of the central main drawing are appendages upon which are illustrated the subject matter to which the Court of Appeals devoted its discussion.

The appendage extending adjacent the "Rock Crusher" machine illustrates the subject matter covered by the portion of this Statement, entitled: "First Conflicting Ground" and shows a hose, coupler and automobile fitting. The Court of Appeals held that since the "Rock Crusher" machines "are always sold and used with a delivery hose attached, the hose being fitted at its forward end with a coupler by which it is attachable to the lubricant fitting" there is no infringement because the claims in suit do not include a hose, coupler and automobile fitting.

The appendage extending adjacent the Baldner machine illustrates the subject matter covered by the portion of this Statement, entitled: "Second Conflicting Ground" and shows the gauge, meter or dial. The Court of Appeals

held that since "there is no meter or gauge of any kind included in the structure" of the "Rock Crusher" grease-dispensing machine there is no infringement, even though the claims in suit do not mention such a meter or gauge of any kind.

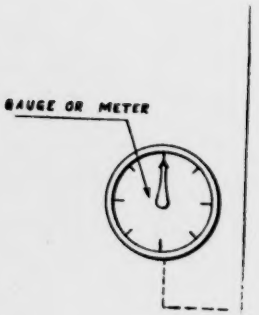
EXAMPLE CLAIM 3 OF BALDNER PATENT:

3. "In an apparatus of the character described, a reservoir, an ejector communicating therewith dividing the discharged material into successive charges of known capacity and conveyor means for supplying the material to the ejector in quantity greater than its capacity whereby said ejector will act to impede the normal flow of the material under influence of the first ejector and will be operated at full capacity to discharge the material in known measured quantity."

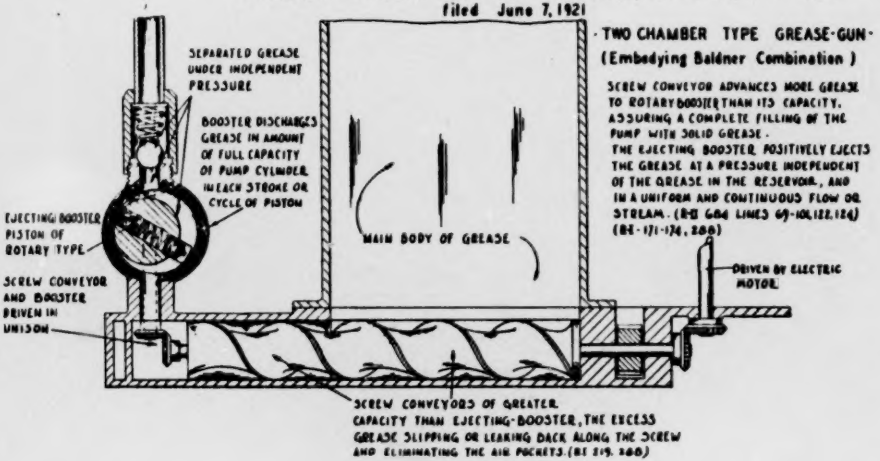
COVERS BOTH GREASE-COMPRESSORS:

APPENDAGE.

Old Hose, Old Coupler, and Old Fitting Not Included In Claims On Improved Grease-Compressor Under Authority of Lincoln vs. Stewart-Warner (303 U. S. 545) and Rogers vs. Alemite (298 U. S. 415).



BALDNER PATENT IN SUIT NO. 1,570,032 (R-II 680-I-478)
filed June 7, 1921


SEPARATED GREASE UNDER INDEPENDENT PRESSURE
BOOSTER DISCHARGES GREASE IN AMOUNT OF FULL CAPACITY OF PUMP CYLINDER IN EACH STROKE OR CYCLE OF PISTON
EJECTING BOOSTER PISTON OF ROTARY TYPE
SCREW CONVEYOR AND BOOSTER DRIVEN IN UNISON
MAIN BODY OF GREASE
DRIVEN BY ELECTRIC MOTOR
SCREW CONVEYORS OF GREATER CAPACITY THAN EJECTING-BOOSTER, THE EXCESS GREASE SLIPPING OR LEAKING BACK ALONG THE SCREW AND ELIMINATING THE AIR POCKETS. (BE 219, 288)

· TWO CHAMBER TYPE GREASE-GUN ·
(Embodying Baldner Combination)

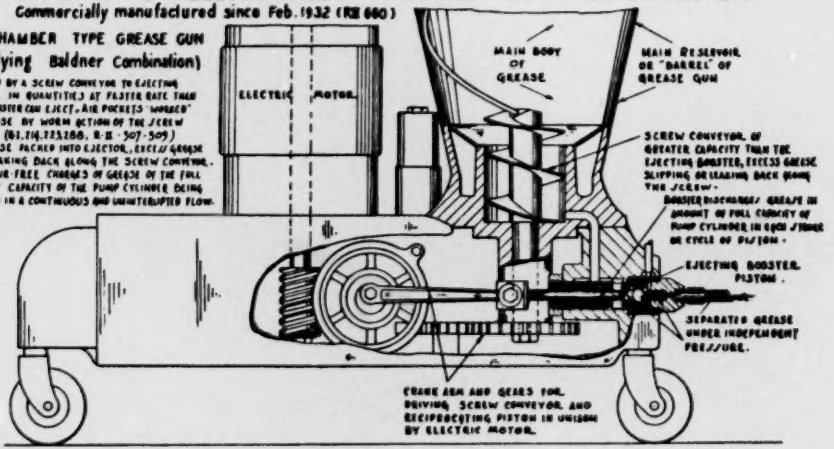
SCREW CONVEYOR ADVANCES MORE GREASE TO ROTARY BOOSTER THAN ITS CAPACITY, ASSURING A COMPLETE FILLING OF THE PUMP WITH SOLID GREASE.
THE EJECTING BOOSTER POSITIVELY EJECTS THE GREASE AT A PRESSURE INDEPENDENT OF THE GREASE IN THE RESERVOIR, AND IN A UNIFORM AND CONTINUOUS FLOW OR STREAM. (R-II 684 LINES 69-101, 122, 124) (BE-171-174, 288)

DEFENDANT'S ELECTRICALLY OPERATED ROCK CRUSHER (R-I-481)

Commercially manufactured since Feb. 1932 (RX 660)

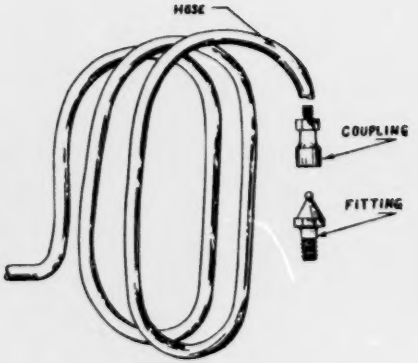
TWO CHAMBER TYPE GREASE GUN
(Embodying Baldner Combination)

GREASE FED BY A SCREW CONVEYOR TO EJECTING BOOSTER IN QUANTITIES AT FASTER RATE THAN EJECTOR BOOSTER CAN EJECT, AIR POCKETS "WORKED" OUT OF GREASE BY WORM ACTION OF THE SCREW CONVEYOR. (81,714,225,288, R-II-507-509) SOLID GREASE PACKED INTO EJECTOR, EXCESS GREASE AND AIR LEAKING BACK ALONG THE SCREW CONVEYOR. SOLID AND AIR-FREE CHARGES OF GREASE OF THE FULL VOLUMETRIC CAPACITY OF THE PUMP CYLINDER BEING DISCHARGED IN A CONTINUOUS AND UNINTERRUPTED FLOW.


ELECTRIC MOTOR
MAIN BODY OF GREASE
MAIN RESERVOIR OR "BARREL" OF GREASE GUN
SCREW CONVEYOR, OF GREATER CAPACITY THAN THE EJECTING BOOSTER, EXCESS GREASE SLIPPING OR LEAKING BACK ALONG THE SCREW.
BOOSTER DISCHARGES GREASE IN AMOUNT OF FULL CAPACITY OF PUMP CYLINDER IN EACH STROKE OR CYCLE OF PISTON.
EJECTING BOOSTER PISTON.
SEPARATED GREASE UNDER INDEPENDENT PRESSURE.
CRANK ARM AND GEARS FOR DRIVING SCREW CONVEYOR AND RECIPROCATING PISTON IN UNISON BY ELECTRIC MOTOR.

APPENDAGE.

Gauge or Meter Not Included In Baldner Claims 2, 3, 4 and 13 In Suit. Claims Measure the Invention: Continental Paper Bag Co. vs. Eastern Paper Bag Co. (210 U. S. 405); Leeds and Catlin vs. Victor Talking Machine Co. (213 U. S. 301); and Altoona Theaters vs. Tri-Ergon Corp. (294 U. S. 477).



REASONS RELIED UPON FOR ALLOWING WRIT OF CERTIORARI AND QUESTIONS PRESENTED.

The judicial discretion of this Court is invoked on the grounds of the following special and important reasons:

(1) The Circuit Court of Appeals for the Seventh Circuit has rendered an erroneous decision in the case at bar, in direct conflict with the decisions of this Court in the case of *Rogers vs. Alemite* (298 U. S. 415) and the case of *Lincoln vs. Stewart-Warner* (303 U. S. 545) upon the same matter; namely, the statutory requirement and legal right of a patentee to confine his patent claims to an improved grease-compressor *per se* wherein his invention resides, rather than including in his claims the old elements of a hose, coupler and fitting with which grease-compressors have long been used.

The **question** presented by this conflict is whether a patentee shall be penalized and deprived of patent protection because his unanticipated and admittedly valid patent claims are confined to the vital and invented part or improvement constituting the real invention as demanded by the patent statutes and as required and insisted upon by this Court in the cases of *Rogers vs. Alemite* and *Lincoln vs. Stewart-Warner.*

(2) The Circuit Court of Appeals for the Seventh Circuit has rendered an erroneous decision in the case at bar upon a vitally important point of patent law, in direct conflict with the following applicable decisions of this Court holding that the claims of a patent define and measure the patented invention and the scope of the patent monopoly rather than the "entire specification":

Continental Paper Bag Co. vs. Eastern Paper Bag Co., 210 U. S. 405;

Leeds and Catlin vs. Victor Talking Machine Company, 213 U. S. 301;

Altoona Theaters vs. Tri-Ergon Corporation, 294 U. S. 477;

Smith vs. Snow, 294 U. S. 1;
Cimiotti Unhairing Co. vs. American Fur Refining Co., 198 U. S. 399;
Merrill vs. Yeomans, 94 U. S. 568;
Railroad Co. vs. Dubois, 79 U. S. (12 Wall.) 47;
Seymour vs. Osborne, 78 U. S. (11 Wall.) 516;
White vs. Dunbar, 119 U. S. 47;
Hogg et al. vs. Emerson, 52 U. S. (11 How.) 587;
Motion Picture Co. vs. Universal Film Co., 243 U. S. 502;
Railroad Co. vs. Mellon, 104 U. S. 112.

The **question** presented by this conflict is whether a patentee who has complied with the statutory requirement to "particularly claim the part, improvement, or combination which he claims as his invention or discovery" * and who has claims which are unanticipated and admittedly valid and which constitute the measure of the invention and patent monopoly under the above decisions of this Court, shall be penalized and deprived of patent protection upon the claimed invention simply because the specification of his patent in addition to describing his claimed invention also describes other parts or features with which his claimed invention may or may not be used as desired.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit sitting at Chicago, Illinois, commanding said Court to certify and send to this Court, on a date to be designated, a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court, and that the judgment of the Circuit Court of Appeals for the Seventh Circuit may

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* Quoted from Section 4888 of the Revised Statutes (U. S. C. Title 35, Sec. 33).

be reversed and that your petitioner may be granted such other and further relief as may seem proper.

KENNETH S. CLAPP,

By BRUCE B. KROST,

Counsel for Petitioner.

The undersigned hereby certifies that the foregoing petition is in his opinion well-founded, and that the case is one in which petitioner's prayer should be granted by this Court.

BRUCE B. KROST,

Counsel for Petitioner.